FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 90

PEOPLE OF THE STATE OF ILLINOIS, EX REL.,
VASHTI McCOLLUM,

Appellant,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 71, CHAMPAIGN COUNTY, ILLINOIS, ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF AS AMICUS CURIAE ON BEHALF OF GENERAL CONFERENCE OF SEVENTH DAY ADVENTISTS

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel

INDEX

	Page
Jurisdiction	4
Question Presented	7
Statement of Facts	8
Argument	15
1. The resolution and plan of the Champaign school board constitute State action respecting an establishment of religion	19
2. The impairment of the free exercise of religion by censorship demonstrates the evils of religious education in the schools	26
Conclusion	31

Table of Cases Cited

Cases:

A. F. of L. v. *Swing*, 312 U. S. 321	29
Bridges v. *California*, 314 U. S. 252, 265	29
Boyd v. *United States*, 116 U. S. 616	23
Cafeteria Union v. *Angelos*, 320 U. S. 293	29
Cantwell v. *Connecticut*, 310 U. S. 296	16
Cantwell v. *United States*, 310 U. S. 296	28
Carlson v. *Washington ex rel. Curtiss*, 234 U. S. 103	18
Chambers v. *Florida*, 309 U. S. 227	18
Cole v. *Ralph*, 252 U. S. 286	5
Davis v. *Beason*, 132 U. S. 333	22
Douglas v. *Jeanette*, 319 U. S. 157 et seq.	28
Everson v. *Board of Education*, 330 U. S. 1	4, 15, 23
Follett v. *McCormick*, 321 U. S. 573	29
Frost v. *Railroad Commission*, 271 U. S. 583	31
Hague v. *C.I.O.*, 307 U. S. 496	29
Hamilton v. *Regents*, 293 U. S. 245	7, 16
Hysong v. *Gallitzin*, 164 Pa. 629	24
Jamison v. *Texas*, 319 U. S. 413	7
State ex rel. Johnson v. *Boyd*, 217 Ind. 348	24
Kerr v. *Enoch Pratt Free Library*, 149 F. (2d) 212 C. C. A. 4 (1945), cert. denied 326 U. S. 721	22

Page

John P. King v. *Augusta Manufacturing Co.*, 275 U. S. 312 7
Largent v. *Texas*, 319 U. S. 418 28
Lovell v. *Griffin*, 303 U. S. 444 29
Martin v. *Struthers*, 318 U. S. 141 29
Minersville School District v. *Gobitis*, 310 U. S. 586 30
Missouri ex rel. Gaines v. *Canada*, 305 U. S. 337, 343 7
Mississippi R. R. Comm. v. *Mobile & Ohio R. R. Co.*, 244 U. S. 383 22
Murdock v. *Pennsylvania*, 319 U. S. 105 28
Nixon v. *Condon*, 286 U. S. 73 22
Northern Pacific Ry. v. *North Dakota*, 236 U. S. 585 22
Palko v. *Connecticut*, 302 U. S. 319 16
Pennekamp v. *Florida*, 328 U. S. 331 18
Pierre v. *Louisiana*, 306 U. S. 354 18
Norris v. *Alabama*, 294 U. S. 587 18
Reynolds v. *United States*, 98 U. S. 145 18, 28
Schneider v. *State*, 308 U. S. 147 29
Smith v. *Allwright*, 321 U. S. 649 18
Thornhill v. *Alabama*, 310 U. S. 88 29
United States v. *Ballard*, 322 U. S. 78 31
United States v. *Classic*, 313 U. S. 299 22
West Virginia State Board of Education v. *Barnette*, 319 U. S. 624 7, 16, 30
Wickard v. *Filburn*, 317 U. S. 111 27

Texts and Miscellaneous:

American Ecclesiastical Review (Catholic University of America):
Vol. 115 No. 4 (1946), pp. 298-300 27-28
Vol. 116 No. 2 (1947), p. 141 20
Bowers, Church and State Education 16
Cobb, Rise of Religious Liberty in America (1902), pp. 491-493 25
Davis Weekday Classes in Religious Education, Bulletin 1941 No. 3, U. S. Office of Education, pp. 3, 22, 25, 27, 29 16, 17, 23

Page

W. S. Fleming, D. D., God in Our Public Schools, 2d ed. (1944), 86 17

Minn. Stats. (1927), Sec. 3080 23

Edward R. Lewis, The Threat in the School Aid Bills, The Christian Century, Vol. 64, pp. 652-653 (May 21, 1947) 24

Virginia Bill for Religious Freedom, 12 Hen. Stats. (1923), 84 ..... 25, 28

Writings of James Madison (ed. G. Hunt), Vol. IX, pp. 126-128 21

Henry J. Williamson, Religion and the Public Schools, The Churchman (August, 1947), Vol. 61, No. 14, pp. 10-11 32

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 90

PEOPLE OF THE STATE OF ILLINOIS, EX REL., VASHTI McCOLLUM,

Appellant,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 71, CHAMPAIGN COUNTY, ILLINOIS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The General Conference of Seventh Day Adventists, representing more than 200,000 members of the Denomination in the United States, prays leave to present this brief *amicus curiae* because of its deep concern with the vital

issue of separation of church and state. The Denomination operates more than 900 day schools, mostly of elementary grades, and would benefit from a program of public aid. It is our position, however, that the prohibition of the First Amendment, through the Fourteenth, forbids state support, financial or otherwise, of religion, in any guise, form or degree and that "religion" as used in the amendment includes religious training and teaching in whatever form.

Pursuant to Rule 27, par. 9, we have sought, but have been unable to obtain, the consent of counsel for both parties to the filing of this brief.

The General Conference of Seventh Day Adventists therefore respectfully moves this Court for leave to file the accompanying brief as *amicus curiae*.

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for General Conference of Seventh Day Adventists.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 90

PEOPLE OF THE STATE OF ILLINOIS, EX REL., VASHTI McCOLLUM,

Appellant,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 71, CHAMPAIGN COUNTY, ILLINOIS, ET AL.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

The President's Committee on Civil Rights, in its report "To Secure These Rights," refers to the right of conscience as "an expression of confidence in the ability of free men to learn the truth through the *unhampered* interplay of *competing* ideas." (Emphasis supplied.) Explaining its failure to make any extensive study of the national record as to freedom of religion, the Committee states (p. 47):

> "what finally determined us was the conviction that this right is relatively secure"

We do not agree. The decision of the court below, if allowed to stand, and particularly if held consonant with

the principles enunciated in *Everson* v. *Board of Education*, 330 U. S. 1, constitutes a direct peril to the separation of church and state and the protection to small religious minorities guaranteed by the First Amendment; a threat so grave as to require this Denomination to voice its protest. The importance of the question outweighs the natural reluctance of the Denomination to file a brief as *amicus curiae*, by which we may give even superficial basis for an erroneous conclusion that we adopt or approve the extreme anti-religionism which has been introduced into the record in this case.

Jurisdiction

The complaint, so far as the Federal Constitution is concerned, alleges that in violation of the First and Fourteenth Amendments instructors in religious education invade the public schools, "usurp and take over the use of said property for religious education," oust the teaching of secular education provided and required by law, and in the place thereof, substitute instruction in religious education in certain grades, including the 4th, 5th and 6th for a thirty-minute period each week. This practice has been maintained for approximately five years (R. 4-5); that the instructor of the children in the class of the child of appellant is employed and compensated by, and under the control and supervision of, the Council (R. 7-8); that by reason of this practice an establishment of religion is engrafted on public school education. Public education is controlled and censored privately by sectarians with resulting denial of equal protection and contrary to the First and Fourteenth Amendments (R. 8); that by reason of the segregation of children of parents who do not consent to their religous education, and accompanying ostracism, hostility and embarrassment, compulsion and coercion are exerted upon the child of plaintiff to participate, and upon the

plaintiff to permit participation, in violation of their constitutional rights to be "free from religion and worship" and from the exercise of either as provided by the First and Fourteenth Amendments (R. 10). The complaint also sets forth the Illinois statutes conferring on the Board of Education control and supervision of public schools (R. 11) and power to appoint all teachers for them (R. 13); and it alleges that the defendant school board provides education as to certain religious beliefs but fails to provide education according to the beliefs of children of certain religious faiths or according to the beliefs of children of atheists in violation of the equal protection clause of the Federal Constitution (R. 14).

The answer supplements the complaint and makes clear the issues as understood by the parties. *Cole* v. *Ralph*, 252 U. S. 286, 290. In Par. 12 (R. 41) it admits the allegation (R. 5) that religious instructors do enter the classrooms of the 4th, 5th and 6th grades and that said practice has been maintained for a period of approximately five years but denies that such practice constitutes an invasion of the schools (R. 41); alleges that the religious education classes "have been solely under the control and jurisdiction of the Champaign Council of Religious Education" and admits that during the period in question the defendant has made available to the Council of Religious Education and each and every faith represented thereby the use of certain rooms in the school buildings (R. 42). Particularly addressing attention to paragraph 24 of the complaint, the answer denies that "Its [the Board's] acts in permitting the said religious education classes to be conducted in the public school buildings of the defendant are contrary either to the First or Fourteenth Amendments to the Constitution of the United States * * *" (R. 45). The answer thus interprets and makes clear defendant's understanding of the complaint with respect to the use of public school-

rooms as alleging that defendant permits such use and as alleging that its acts in so permitting such use violate the religious liberty clause of the First Amendment made part of the Fourteenth Amendment, and the equal protection clause of the latter.

The Trial Court recognized appellant's contention to be "that school laws become laws for *establishment of religion* where religious education in the public schools and the public school houses aids, creates and increases interest in the religion and patronage of churches whose religion is being taught" and that the "Champaign system" violates the First and Fourteenth Amendments to the Constitution of the United States (R. 71).

The Supreme Court of Illinois stated (R. 270):

> "The errors relied upon by the relator for reversal are: (1) The segregation of public-school pupils into sectarian groups for the purpose of instruction in a public school is violative of Federal and State constitutional guaranties of freedom of religion—the fourteenth amendment to the Federal constitution * * * (4) The discretion of an administrative body and officer in this case is * * * a violation of the guaranties of due process of law and equal protection of laws by the fourteenth amendment to the constitution of the United States."

And it added (p. 271):

> "It is particularly urged that the plan of the school district of providing religious instruction for three groups—Catholic, Jewish and Protestant through distribution of cards or schedules for voluntary registration, with provision of public schoolroom and of school-time periods for such instruction is obnoxious to the constitutional guaranties."

The context of the last clearly indicates that the reference is to the freedom of religion guaranteed by the fourteenth

amendment as well as to the state constitutional provisions.

The court summarized the record (R. 279) as presenting the simple question:

> does either the Federal or State constitution, or both, in their guaranty of religious freedom, prohibit voluntary religious classes in the public schools under the plan as disclosed by this record?

Furthermore, the evidence includes testimony of the President of the School Board that "according to the minutes of the school board they were granted permission [for religious education in the schools] on June 6, 1940." (R. 127).

Stripped of artificialities the record is clear that the parties and the Courts understood the complaint as drawing in question the validity of the resolution of the School Board granting permission for religious education under which the Champaign plan was instituted on the ground of its being repugnant to the 1st and 14th Amendments to the Constitution of the United States. The administrative action of the school board must be regarded as state action. *Missouri ex rel. Gaines* v. *Canada*, 305 U. S. 337, 343; *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624.

Jurisdiction of this Court under Section 237(a), Judicial Code, is therefore clear. *Hamilton* v. *Regents*, 293 U. S. 245; *John P. King* v. *Augusta Manufacturing Co.*, 275 U. S. 312; *Jamison* v. *Texas*, 318 U. S. 413.

Question Presented

Whether a resolution of a municipal board of education is repugnant to the religious liberty clause of the First Amendment included in the Fourteenth Amendment where it authorizes the use of public school rooms for thirty to fifty minutes once a week during regular school time for

sectarian religious instruction of children of parents indicating permission that they be so instructed where such permission is obtained on cards prepared and distributed through the office of the superintendent of schools and where, pursuant to the authority granted by the school board, an independent Council of Religious Education to which all sects are welcome through committees, including representatives of the Protestant, Catholic and Jewish groups, censors all lesson material and curricula so as to eliminate offensive, doctrinal, dogmatic or sectarian teaching and, subject to the approval of the school superintendent, appoints the instructors who are paid by the several church organizations, and through such instructors, pursuant to direction of the school superintendent, arranges with school principals and teachers for time and rooms.

Statement of Facts

This is a petition for a writ of mandamus brought in the Circuit Court of Champaign County, Illinois, by Vashti McCollum, as resident and real property taxpayer in Champaign School District No. 71 and as mother of James Terry McCollum, a ten-year old boy attending the Dr. Howard Public School in that School District. The prayer was for an order directing the Board to prohibit all instructions in and teaching of religious education in all public schools in that district (R. 1, 17).

The Champaign Council of Religious Education has three elements: Protestants, Catholic and Jewish groups (R. 106, 157). On the Council's curriculum and finance committees are representatives of the three groups (R. 157). Each of the three groups also has work, curriculum, finance and personnel committees of its own (R. 157). The curriculum committee of the Protestant group does not select or help in the selection of material for Catholic classes (R. 226).

It is the policy of the Council that no denominational belief shall be taught (R. 107, 159, 161, 162).

The Protestant committee selects general religious matter accepted by the over 200 Christian churches that agree on fundamentals (R. 226) but it was all Protestant material (R. 227). This curriculum committee did not select for teaching any doctrinal material or teach particular beliefs of any church. It had the policy of having churches bring in any material desired to be used and to prevent any material being used that would bring up controversies or difficulties (R. 227). The committee could not accept everything that was offered as material to be used in the courses. At times material submitted was in conflict with teachings of the Episcopal Church and probably not acceptable to a good many (R. 228). The committee intends to protect the courses against antagonistic matter being taught and examines the material to be sure none is antagonistic to other religious organizations (R. 162).

All denominations were invited to participate in the religious education program (R. 159). The Council does not have representation from all denominations in Champaign. (R. 157). The Lutheran Church does not participate because it has its own religious instructions on Saturday mornings (R. 122). It has permission to use the school rooms for instruction when there are a sufficient number of children (R. 121). The Lutherans have indicated their intention to join (R. 159, 163, 167) and they will be welcome by the Council reserving the right that no prejudicial personalities or materials be put in the courses (R. 162). Lutherans already attend some of the classes (R. 122).

The Champaign system is modeled after a movement taking place throughout the country in 1009 school systems in 46 states (R. 160). Between 35 and 40 denominations are represented in the classes (R. 168). The Council includes

representatives of the Presbyterian, Baptist, Methodist, United Brethren, Christian, Episcopalian, Congregational, Disciples of Christ, Four Square Gospel and possibly other churches (R. 92, 129). It does not include Seventh Day Adventists or Quakers (R. 163).

The Council recommended that classes be held in school buildings if possible because of the convenience and safety of the children as compared with travel to the churches (R. 158). The reason for conducting these religious education classes in the schools instead of churches is because of the availability of the children of all denominations and religious groups (R. 166). Release of children to go to churches in many cases would be impractical (R. 242). The children are under the supervision of the teachers from the time they are in school until dismissal (R. 242).

In the Protestant group, instructors' salaries are provided by contributions of the ministers (R. 129) obtained from the several churches in proportion to their ability to contribute (R. 130, 157). A committee of the Council selected the teachers who were also approved by the superintendent (R. 130).

There are ten grade schools in Champaign (R. 267) and one junior high (R. 258). In 1944-1945 in junior high 134 of the 800 pupils registered for religious education; in the sixth grade 249 out of 295; in the fifth grade 206 out of 286; and in the fourth grade 196 out of 298 (R. 258). In all there were about 35 religious education classes. Of these 31 were Protestant (R. 91) taught by a Miss Chapin and a Mrs. Jorgenson (R. 91, 137). Two Catholic priests also taught (R. 91, 105). The Catholic instruction is in three schools at two of which there were no more than five pupils from the 4th, 5th and 6th grades. At the Junior High there were 10 or 12 pupils (R. 150). There was no Jewish instruction in 1944, 1945 or 1946. There was in 1941-1942 and 1943-1944, the classes being taught under the supervi-

sion of a rabbi (R. 224, 229). Fees collected by Miss Chapin from Catholic and Jewish children for materials are turned over to Catholic fathers and the Jewish rabbi respectively (R. 223-224).

Starting at 9:00 o'clock Monday morning Miss Chapin taught at Dr. Howard school, the 6th grade class (R. 91). In a normal class of 28 only 5 or 6 did not participate (R. 91). The same ratio existed in the next group. Students not taking religious instructions are not permitted to leave the premises (R. 115). If a particular church had only one or two pupils for instruction they would move out to a smaller space for such instruction R. 120). There was some testimony that those not participating went to the office with their teacher for regular class work (R. 92, 110), but they did not get more attention or instruction than those taking religious instructions because all children are given an equal amount of individual help such as was given to those children at this time. But there was other testimony that some of the teachers remained with the religious education classes (R. 92, 132, 133) and children who did not participate were sent out of the room with "material they needed to work, maybe recreational reading" (R. 132). In one case where non-participating children remained under the supervision of the teacher, they did things that were "interesting to them" (R. 147). The classes occupied thirty minutes of a fifty-minute period (R. 112, 116). The regular teacher could return to the class to preserve discipline (R. 115). This was the procedure throughout the day at the Dr. Howard School (R. 92). Miss Chapin did not have 100% attendance. Among those participating, there were included many different denominations but no Jews, Catholics or Seventh Day Adventists (R. 92). Miss Chapin is employed by the Council upon reference by the Committee (R. 92, 156). Her material is approved by a curriculum committee consisting of Presbyterian and Congregational

lay members (R. 93, 156). She did not always follow the outline (R. 98). She never used any form of social pressure or coercion to induce registration (R. 106).

Cards signed by the children's parents simply stated that they authorized instruction "Under the auspices of the Champaign Council of Religious Education" based on interdenominational, Protestant, Catholic or Jewish faiths (R. 94) and when the children registered their registration cards showed their particular denominations (R. 94, 145). The regular public school teachers distributed cards for expression of permission by parents after Miss Chapin, the religious instructor for the Protestant group named by the Council, delivered cards to them and in some cases they collected the cards for return to her (R. 94, 133, 148, 175). Some teachers took no part in the distribution of the cards (R. 114, 115). These cards also stated that a fee of 25 cents a semester would be charged for the cost of material used and named Miss Chapin as director. The card was headed "Champaign Council of Religious Education" and titled "Parents Request Card." The card in evidence (R. 176) was printed for Miss Chapin's use (R. 223). In May, 1945, the School Board mimeographed cards and was paid therefor by the Religious Council (R. 117, 223, 240), although there is no record of such payment (R. 215). The junior high school schedule card blanks do not have thereon the words "Religious Education;" the child has to write it in (R. 240).

Absentees from religious instructions are reported on the same sheet as in other classes to the superintendent's office (R. 224, 238). Enrollment is obtained from the cards in the elementary school and from the principal's office in junior high (R. 224).

The superintendent testified that teachers and principal were required to make arrangements with the religious education instructors. They came in a manner similar to

the music and art supervisors other than regular teachers (R. 117).

The superintendent does not determine who the religious teachers shall be (R. 118). The school board, however, has the unwritten reservation that the religious teacher should be qualified to teach. If the person is qualified to teach properly, the superintendent would permit the use of class rooms. But religious teachers are required to be approved by the superintendent (R. 118, 127). The board would want a qualified person who would know the correct usage of the English language, use good grammar, of the same general type as a class room teacher (R. 118). Proper application must be made to the school board following the regular procedure and each application will be given the same type of treatment that every other religious sect or denomination receives (R. 119, 123). The answer alleges only that free use of class rooms is extended to every faith represented by the Council (R. 42). Before the superintendent would grant permission he would want the names of the pupils, the school, and the number of pupils and also to make the regular arrangements (R. 126).

No more heat is required or occasioned in the public school buildings by the teaching of religious education (R. 238). The religious classes generally used no artificial light but did use the black board (R. 133, 134). The school board does not use any class room for religious education that is not used for other classes (R. 241), and the religious classes use the same desks and black boards as the other classes (R. 241).

In the fifth grade at the Dr. Howard School, in the first semester there were two pupils who did not take religious education, Terry McCollum and another; in the second only McCollum. In the first the teacher, Miss Taylor, took them to the music room (R. 132). In the second, McCollum went

to the music room alone; one day he had to sit in the corridor (R. 132, 175) but during the last two months of the second semester he went to another fifth grade class room (R. 255, 257). When McCollum went to the music room alone his teacher checked on him every ten minutes because he was a problem child (R. 255, 257).

McCollum was not accepted as a member of his class (R. 135) even before religious education classes started (R. 135). He was bellicose and the children did not like him (R. 136). His teacher suggested to his mother that his joining the religious group might help him (R. 136). Part of the time the regular teacher sat at her desk in the room where religious education was being given observing what was being taught (R. 133). When the children teased McCollum, assuming he was sitting in the corridor for punishment (R. 175, 193) his teacher urged him to take religion (R. 175). He wanted to take the course because he disliked being alone and was conspicuous (R. 177, 178). At the South Side School in the fourth grade McCollum, along with four or five others, did not take religion but went to the rest room ordinarily used by the teachers during that period (R. 262, 263). McCollum took religious education at the South Side School in the last half of the fourth grade (R. 178) and his mother consented because he asked to (R. 214, 232).

He wanted to take religious education and again he did not (R. 182). He tried to keep his atheism secret only from some because he was proud of his distinction in that respect, but on the other hand disliked being teased (R. 184, 186). The record also includes testimony that there were no comments or other adverse effects among the other children resulting from the failure of Terry McCollum or others to take a religious education course (R. 244, 254, 260, 266).

The circuit court, after trial, made findings of fact and conclusions of law and entered its order denying the peti-

tion (R. 89). It found that no public funds had been directly appropriated by the defendant for private use but to some slight extent the "defendant has indirectly appropriated public funds for the use of these classes, by the furnishing of rooms in public school buildings, light, heat, janitor service, and so forth" (R. 70). It concluded as a matter of law that there were no precedents on the question in the decisions of this Court (R. 77), and that no constitutional or statutory rights of the relator or her son had been violated by the Champaign system (R. 88-89).

The supreme court of Illinois held that the question was simply whether either the Federal or State constitutions, in their guaranty of religious freedom prohibit religious education under the plan as disclosed by this record. It accordingly affirmed the trial court on the ground that such classes "do not violate the freedom of conscience of any individual or group so long as the classes are conducted upon a purely voluntary basis" (R. 279). It affirmed the trial court January 22, 1947 (R. 280). The chief justice of that court allowed appeal April 16, 1947 (R. 283). Statement as to jurisdiction was filed April 18, 1947, and on June 2, 1947, this Court entered its order noting probable jurisdiction (R. 285).

Argument

The First Amendment provides that the Congress

> "shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *"

In *Everson* v. *Board of Education*, 330 U. S. 1, the Court gave sanction to the use of public funds for the financial aid of private religious schools by providing transportation money to their pupils. This case involves an attempt by the Champaign authorities to introduce religious education into the public schools, and so support religion with public

funds. Both measures, we continue to maintain, violate the First Amendment, now recognized as incorporated in the Fourteenth. *Hamilton* v. *Regents*, 293 U. S. 245; *Palko* v. *Connecticut*, 302 U. S. 319; *Cantwell* v. *Connecticut*, 310 U. S. 296, 303; *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624. Views of individuals or sects as to the wisdom of the separation of church and state so imposed or even as to its ultimate practicability may differ. See Bowers, Church and State in Education (1944). But the complete division of religious and civil authority which our forefathers prescribed in the First Amendment necessarily excludes every form of propagation of religion from the realm of things which may, directly or indirectly, be made public business and thereby be supported in whole or in part at taxpayer's expense.

The development of weekday classes in religious education has been mainly fostered by the International Council of Religious Education. It outlines the plan as follows:

> "Its [the weekday church school's] sessions are held in church buildings or in buildings owned or rented by the weekday church school council or, where possible and advisable, in public school rooms. These sessions are held during regular public school hours, or during the last period of the day, or after school. (These arrangements are known as 'released time', 'dismissed time' and 'free time,' respectively.) (Davis, *Weekday Classes in Religious Education*, Bulletin 1941, No. 3. U. S. Office of Education, p. 3.

The same Government bulletin amplifies the definition as follows (p. 22, note 15):

> Released—only pupils enrolled in the weekday religious education program leave their classes and return later in the day: other pupils remain. Dismissed—all pupils leave their classes whether or not they attend weekday classes in religious education.

The question here involved is therefore as to the propriety of "released time" religious education classes in public schools.

Since its origin in Gary, Indiana in 1913, the teaching of religious education in the public schools has spread until the results of a fair sampling indicate that in the elementary grades where released time is permitted 60 per cent of the pupils attend religious education classes; in the high schools, 34 per cent. Davis, *Weekday Classes in Religious Education*, Bulletin 1941, No. 3, p. 25. In 1940 approximately 40 per cent of the classes were held in public school buildings. *Ibid.*, p. 27. This steady growth and development cannot be ignored. The breach in the wall between church and state is being steadily widened and is but an intermediate step toward what is by its supporters regarded as the ultimate solution of "giving non-sectarian religious instruction in the public schools as an integral part of our system of public education, by teachers qualified to give it and employed and paid by the State." W. S. Fleming, D. D., *God in Our Public Schools*, 2d ed. (1944), p. 86.

In the *Everson* case, all the members of this Court appear to have been at one as to the broad principles involved and even as to the refinements of those principles. The majority opinion states the applicable law in terms that would seem to leave utterly without foundation any argument in support of the religious instruction in public schools here involved. The majority opinion of Mr. Justice Black states (pp. 15-16).

> "The 'establishment of religion' clause of the First Amendment means at least this: *Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.* Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion.

"* * * *No tax in any amount, large or small, can be levied to support any religious activities* or institutions, whatever they may be called, or *whatever form they may adopt to teach or practice religion.* Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organization or group and *vice versa.* In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and state.' *Reynolds* v. *United States,* 98 U. S. 145, at 164. * * *

"* * * New Jersey cannot consistently with the 'establishment of religion' clause of the First Amendment *contribute tax-received funds to the support of an institution which teaches the tenets and faith of any church.*" (Emphasis supplied.)

With this statement of the law all dissenting justices agreed. See 330 U. S. 1, 19, 33. The division in that case appears to have resulted from: (1) Variant views as to the facts and (2) Divergence as to the limitations on the public welfare concept under the due process clause imposed by the specific prohibitions of the First Amendment. Because the question here is whether the Federal constitutional right was denied in substance or effect, the attention of the Court is again directed to the facts of record and to the anomalies necessarily incident to any extension to this case of the principles upon which the majority relied in the *Everson* case. *Carlson* v. *Washington ex rel. Curtiss,* 234 U. S. 103, 106; *Norris* v. *Alabama,* 294 U. S. 587, 590; *Pierre* v. *Louisiana,* 306 U. S. 354, 358; *Chambers* v. *Florida,* 309 U. S. 227, 229; *Smith* v. *Allwright,* 321 U. S. 649, 662; *Pennekamp* v. *Florida,* 328 U. S. 331, 335.

1. The resolution and plan of the Champaign school board constitute State action respecting an establishment of religion.

The facts of this case clearly demonstrate that the Champaign school board resolution provides for the teaching of religion in the public schools. Delegating part of its authority to control the curriculum in the public schools, the Board has permitted the institution of religious education which is identified with no particular sect or creed hitherto known as such.

In effect, for the majority, a new religion is established under authority of the school board. The Council of Religious Education has been given general control over the teaching of religion in the schools including the selection of teachers, although the latter is subject to approval of the superintendent (R. 118, 127, 130). Denominations applying for leave to teach are required to go through the regular procedure (R. 123) and work through the religious council (R. 125, 127, 162). The answer alleges that the religious education classes have been solely under the control and jurisdiction of the religious education council and that, since establishment of the classes, the defendant has made use of the classrooms "available to said Religious Education Council and *every faith represented thereby*" (R. 42) (Emphasis supplied). While all religious denominations are free to participate in the council (R. 159), representatives of the Protestant, Jewish and Catholic groups act together on the Council curriculum committee to examine personnel and curriculum to eliminate anything prejudicial to, or intolerant of, any of the groups (R. 157). It is the policy of the Council, at least in the so-called Protestant group, that no denominational belief or doctrinal material shall be taught and that policy is strictly adhered to (R. 107, 227). The material used in the Protestant classes is

general religious matter accepted by the great Christian church throughout the world; that is, the general run of over 200 Christian churches which are in agreement on fundamentals (R. 226). It is not the purpose of the Council to teach the doctrines of any particular church (R. 159) but to teach the things common to all participating denominations (R. 159). The objective of the whole program is tolerance (R. 159). It is the Council's attitude that the particular doctrines of particular religious sects are not its concern (R. 159). Nothing is being taught that is antagonistic to other religious organizations nor contrary to the creed of other sects (R. 162) but only the doctrines of members of the Council are taken into consideration for instruction (R. 163). As one result an interested Lutheran thought the teaching in the Protestant classes only partially in accord with the principles of the Lutheran Church because it omitted the divinity of Christ (R. 122). Possibly this flows from the Jewish and Unitarian non-recognition of such divinity (R. 218, 231) and the avowed purpose to avoid controversy.

It thus appears that the school board has granted to the Council of Religious Education and through it to the Protestant group therein authority to give educational classes in a non-doctrinal, non-sectarian religion consisting of religious matters accepted by "the general run of Christian churches which are in agreement on fundamentals * * * there are over 200. That includes the Catholic Church"[1] (R. 226). This body of common beliefs

[1] The Roman Catholic attitude on this point is stated in the American Ecclesiastical Review (Catholic University of America), February, 1947, (Vol. 116, No. 2) p. 141: "Similarly to characterize the relation between Catholics and Protestants as unity-in-diversity, is misleading, inasmuch as it implies that essentially Catholics are one with heretics, and that their diversities are accidental. Actually, the very opposite is the true situation. For however near an heretical sect may seem to be to the Catholic Church in its particular beliefs, a wide gulf separates them, inasfar as the divinely

is taught as a "Protestant" religion, in effect, a new religion evolved under the auspices of the school board and taught in the public schoolrooms. Thus the school board's "Protestant" religion represents what is, in effect, the greatest common denominator on which the majority of representatives on the council can agree; it is a moralistic religion directed to the strengthening of "character, honesty, truthfulness, dependability and such things as that" in order that democracy may be helped (R. 158-159). The representatives of what is apparently a majority in the community have agreed upon a minimum of religious teachings which they deem proper to be taugh in the public schools.[2] This curriculum of religious instruction is no less propagation of religion because it teaches the doctrines of no particular church (R. 159). "The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded

---

established means whereby the message of God is to be communicated to souls—the infallible magisterium of the Church—is rejected by every heretical sect. By telling Protestants that they are one with us in certain beliefs, in such wise as to give the impression that we regard this unity as the predominant feature of our relation with them, we are actually misleading them regarding the true attitude of the Catholic Church toward those who do not acknowledge her teaching authority."

[2] The project bears a striking resemblance to a similar plan of which Madison wrote Edward Everett: "I recollect to have seen, many years ago, a project of a prayer by Governor Livingston, father of the present Judge, intended to comprehend and conciliate college students of every Christian denomination by a form composed wholly of texts and phrases of Scripture. If a trial of the expedient was ever made, it must have failed, notwithstanding its winning aspect, from the single cause that many sects reject all set forms of worship.

"The settled opinion here is that religion is essentially distinct from civil government, and exempt from its cognizance; that a connection between them is injurious to both; that a legal establishment of religion without a toleration could not be thought of, and with a toleration, is no security for public quiet and harmony, but rather a source itself of discord and animosity." Writings of James Madison (ed. G. Hunt), Vol. IX, pp. 126-128.

with the *cultus* or form of worship of a particular sect, but is distinguishable from the latter." *Davis* v. *Beason*, 133 U. S. 333, 342.

It also seems clear that the Council of Religious Education in exercising the authority delegated to it by the school board is properly to be classified as a representative of the State and that the Council's acts in determining curriculum and in selecting teachers are State action within the meaning of the Fourteenth Amendment. *Nixon* v. *Condon*, 286 U. S. 73, 88-89; *United States* v. *Classic*, 313 U. S. 299, 326; *Kerr* v. *Enoch Pratt Free Library*, 149 F. 2d 212, 219 (C. C. A. 4, 1945) cert. denied 326 U. S. 721.

Under the plan here involved a taxpayer is compelled to contribute to the support of instruction in religion in which he does not believe. The court below sought to obviate this difficulty on the theory that the use of the class-room for religious rather than secular study represented no additional out-of-pocket expense to the school board or to the public. But this argument is untenable with respect to the Federal constitutional question. This Court long ago ruled that it is not a sufficient reason for excluding from consideration expenses which are none the less existent because they are applicable to all uses of the property instead of being exclusively incurred in the particular use in question and would still have been incurred in the absence of the particular use. When conclusions are based on cost the entire cost must be taken into account. *Northern Pac. Ry.* v. *North Dakota*, 236 U. S. 585, 596-597; *Mississippi R. R. Comm.* v. *Mobile & Ohio R. R. Co.*, 244 U. S. 383, 395. Surely the freedom of worship protected by the First Amendment is not less sacrosanct than the protection of property afforded by the due process clause of the Fourteenth Amendment alone and recognized in the cited cases.

The principle *de minimis* has no room for application here. As stated in *Boyd* v. *United States*, 116 U. S. 616, 635:

> "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*."

As emphasized in Madison's Remonstrance, par. 3 (reprinted in the Appendix to the dissent in *Everson* v. *Board of Education*, 330 U. S. 1, 65-66):

> "Who does not see • • • That the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever."

So here, if use of a public school classroom for 30 minutes per week is permissible, then so also is use for the three hours per week contemplated by the Minnesota statute (Minn. Stats. (1927) sec. 3080) and the five hours per week permitted in certain other school systems. See Davis, *Weekday Classes in Religious Education*, Bulletin 1941 No. 3, p. 29.

Aside from the direct aid to propagation of the Council's religious teachings, and to propagation of the beliefs of such individual sects as are willing to avail of the opportunity to use the public school rooms upon the conditions

imposed, there results another valuable aid which while indirect is nevertheless real. By virtue of the Champaign program it is plain that the parochial or church schools and churches will *pro tanto* be relieved of the expense of opening their schools on Saturday and Sunday for instruction of public school students. In this way too they are aided by tax-collected money of members of other sects or non-believers in their propagation of religious doctrines to which the latter do not subscribe. See Edward R. Lewis, "The Threat in the School Aid Bills" *The Christian Century*, Vol. 64, p. 652-653 (May 21, 1947).

The only feature that could make the action of the school board in this case more plainly a law relating to the establishment of religion would be the payment of the religious instructors from public funds. If by merely making attendance at religious instruction voluntary and paying the religious instructors from private sources, a school can avoid the proscriptions of the First Amendment, it would seem that the present parochial and church schools of any sect could qualify for public support. All that would be needed is to make religious instruction of the individual pupil subject to the will of the parents and arrange to have the religious instructors paid from other sources. Cf. *State ex rel. Johnson* v. *Boyd*, 217 Ind. 348; *Hysong* v. *Gallitzin*, 164 Pa. 629.

There would then be no fundamental difference between public schools and the various church or parochial schools except as to administrative agency. Sooner or later the state would be forced to abdicate the field of education to non-public agencies, retaining only the function of tax gatherer for a church administered system of education; or else the state will be forced to take over and integrate church and public schools. In either case the result would be a virtual merger of church and state.

But the First Amendment means that neither a single sect, nor two or more sects nor all of the sects put together have a right to draw money under any guise whatsoever from the public treasury to promote their enterprises, religious, educational or eleemosynary. No citizen or religious minority can be compelled to join in a community effort to teach religion in the schools. And the objection that they are here, in effect, being forced by public taxes to help maintain church functions cannot be answered by saying that they might enjoy the same privilege to instruct in the public schools in their particular beliefs. As stated in the preamble to the Virginia Bill for Religious Freedom (12 Hen. Stats. (1823) 84, 85):

> "• • • even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor, whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labours for the instruction of mankind. • • •"

Nor is the objection obviated by the provision that attendance at the religious instruction classes is voluntary. Compulsory attendance requirements had been repealed in Virginia long before 1784 when the Assessment Bill was proposed and 1786 when the Virginia Bill for Religious Freedom was enacted. Compulsory attendance was not, and for a long time had not been, an issue at the time of the adoption of the First Amendment. See Cobb, Rise of Religious Liberty in America (1902), pp. 491-493.

Religion is voluntary. But here public moneys are raised by force of taxation levied alike on those who have religion

or those who have none. And when religion invokes the taxing power of the state to advance any of the institutions of the church, then religion denies its voluntary nature.

Here the State takes a direct concern in the teaching of religion, directing the principals and teachers, and authorizing representatives of the Religious Council, to arrange for time and place of utilization of public school facilities, passing on the suitability of teachers and delegating to the Council of Religious Education authority to determine what religious doctrines shall be taught in the public school buildings. Clearly the resolution and plan here involved constitute a law respecting an establishment of religion within the meaning of the First Amendment.

2. The impairment of the free exercise of religion by censorship demonstrates the evils of religious education in the schools.

Public funds are used in the erection and maintenance of the Champaign public schools free use of which is granted by the school board to sects for religious education. But such free use is limited to sects whose doctrines are deemed by the Council of Religious Education to be not antagonistic to other sects or likely to occasion controversy and to sects that are willing to forego instruction in such portions of their doctrines as may give rise to controversy when such instruction is given in the public schools. The censorship of the curriculum of the religious education classes in the schools, plain on the record in this case, not only constitutes a violation of the constitutional bar against laws prohibiting "the free exercise thereof"; it also is an acknowledgment and an adumbration of the evils that must flow from attempts to introduce religious education into the public schools.

As pointed out above, all religious denominations are free to participate in the Council of Religious Education (R. 159) but representatives of the Protestant, Jewish and

Catholic groups act together on the Council curriculum committee to eliminate anything prejudicial to, or intolerant of, any of the groups (R. 157). Individual Protestant sects may teach in the schools but the Council of Religious Education reserves the right to censor the material so that no prejudicial personalities or material will be put in the courses (R. 162) and nothing prejudicial to any one of the groups or intolerance to any of the groups shall be presented (R. 157). The religious council intends "to protect the courses against antagonistic matter being taught" (R. 162) and "to prevent any material being used that would bring up controversies or difficulties" (R. 227) and it has done so (R. 228).

Under these regulations, a sect that might consider conducting a course in the doctrines of the particular denomination is subjected to the threat of censorship as a condition of the exercise of the right to teach such doctrines. Religious teaching having been made a public affair by taxing citizens of one belief to aid another, and those of no faith to aid all, it thus has been treated as losing its protection as a private matter against infringements imposed by the State. As said in *Wickard* v. *Filburn*, 317 U. S. 111, 131: "It is hardly lack of due process for the Government to regulate that which it subsidizes." Here the alleged freedom of all sects to conduct classes in the schools is illusory. The alleged voluntary choice in religious education is not between conducting and attendance upon classes in the so-called "Protestant" religion, established by the religious council, and any other set of beliefs but between the prescribed "Protestant" curriculum and the teachings of any other sect modified, however, to exclude therefrom any teachings that might be regarded as antagonistic to other sects and denominations.[2] This is no free-

[2] The antagonistic teachings of the Jehovah's Witnesses would seem plainly to be barred under the announced principles of the Council of Re-

dom of choice at all. As stated in the preamble to the Virginia Bill for Religious Liberty (12 Hen. Stat. 84): "To suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession of propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty." *Reynolds* v. *United States*, 98 U. S. 145, 163. The censorship exercised under the authority of the school board is contrary to the basic philosophy of the Bill of Rights. A community may not suppress the dissemination of views because they are unpopular, annoying or distasteful. The admitted censorship of the Council of Religious Education is therefore a clear abridgement of the freedom of religion. *Murdock* v. *Pennsylvania*, 319 U. S. 105, 116; *Largent* v. *Texas*, 318 U. S. 418, 422.

The Council of Religious Education undoubtedly had sound basis in fact for their evident fears that the teaching

---

ligious Education. See *Cantwell* v. *United States*, 310 U. S. 296, 301; *Douglas* v. *Jeannette*, 319 U. S. 157, 170 *et seq.*

The record is silent as to the degree in which Catholic and Jewish teachings were modified. See R. 150-151. However, they also would seem to fall within the ban as to some of their teachings. For example, the Catholic church, while recognizing (1) The *civil right* of every American to choose his religion; (2) The *moral right* of every person enjoying the use of reason to choose his religion in that there can be no rightful attachment to a religious body other than by way of a free choice; and (3) The *civil right* of every American to choose a religion forbidden by God, also teaches that—

"(4) It is *objectively and morally wrong* for any human being to disregard or to disobey a command issued by God himself, when that command is directed to all men and when it is brought to the attention of mankind with adequate clarity. • • • Hence, *since there is a real and objectively manifest divine precept that all men live within the Catholic Church, it is objectively a moral wrong for any American or for that matter, for anyone else, to adopt a non-Catholic religion.* If through no fault of his own, a person does not realize the existence of this divine command, he cannot and will not be blamed for living other than as a Catholic. If, however, a man is vincibly ignorant of the divine command, or if, *a fortiori*, he knows of its existence and refuses to obey it, his subjective attitude is morally wrong." American Ecclesiastical Review (Catholic University of America), Vol. 115, No. 4 (1946), pp. 298-300. (Last emphasis supplied.)

in full of the doctrines of one or more of the sects which might seek to teach in the schools would engender discussion and controversies among the pupils. In fact it is hardly reasonable to believe that such result would not follow. But religious liberty is essentially the right of nonconformity. A man who is not free to practice his religion, to propagate it and to discuss it, cannot really be free at all.

So here, even had there been no proof of the exercise or abuse of its asserted power of censorship by the Council of Religious Education, the resolution and plan of the school board is nevertheless subject to attack on its face. It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of religion. The evil of censorship includes those who remain silent rather than risk publicity or censure. *Thornhill* v. *Alabama*, 310 U. S. 88, 97; *Schneider* v. *State*, 308 U. S. 147, 162-165; *Hague* v. *C. I. O.*, 307 U. S. 496, 516; *Lovell* v. *Griffin*, 303 U. S. 444, 451. To proscribe or censor the dissemination of doctrines or arguments which do not transgress moral limits is to destroy the principal bases of democracy—knowledge and discussion. "The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance." *Martin* v. *Struthers*, 318 U. S. 141, 143; *Lovell* v. *Griffin*, 303 U. S. 444, 451; *Follett* v. *McCormick*, 321 U. S. 573, 577. The same principle underlies the freedoms of speech and the press. *Thornhill* v. *Alabama*, 310 U. S. 88, 95, 97; *Hague* v. *C. I. O.*, 307 U. S. 496, 516; *Schneider* v. *State*, 308 U. S. 147, 161; *A. F. of L.* v. *Swing*, 312 U. S. 321, 326; *Bridges* v. *California*, 314 U. S. 252, 265; *Cafeteria Union* v. *Angelos*, 320 U. S. 293.

But the religious freedom guaranteed by the First Amendment does not rest alone upon the theory that public intel-

ligence must have the benefit of all competing doctrines in order successfully to attain the ends of democratic government through majority rule. In matters of religion, everyone is in the minority. The right of conscience guaranteed rests on a recognition of the supremacy dignity of man and of the necessity to protect his basic rights against the majority. As Mr. Justice Stone said in his famous dissent in *Minersville School District* v. *Gobitis*, 316 U. S. 586, 606:

> "The Constitution expresses more than the conviction of the people that democratic processes must be preserved at all costs. It is also an expression of faith and a command that freedom of mind and spirit must be preserved, which government must obey if it is to adhere to that justice and moderation without which no free government can exist."

In *West Virginia Board of Education* v. *Barnette*, 319 U. S. 624, 637-638, this Court said:

> "Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party or faction * * *
>
> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right * * * to freedom of worship * * * may not be submitted to vote; they depend on the outcome of no election."

(p. 642):

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein."

It must necessarily be concluded that whether teaching of religion in the public schools be regarded as a constitutional right or as merely a privilege, the condition upon which permission so to teach is here granted—submission to censorship of curriculum—is invalid because it requires relinquishment of constitutional rights. *Frost* v. *Railroad Commission*, 271 U. S. 583, 593-599.

But the Council of Religious Education was conscious of the dangers of religious distinctions and differentiation among children of tender years; so conscious that it chose to invoke censorship in religion rather than run the risks inherent in teaching the controversial subjects of religious belief, the tenets which are the chief distinction between the sects. Thus the very proponents of religious school training in effect admit that exercise of the constitutional right to propagate religious beliefs can not, as a practical manner, in its full scope be permitted to all the sects in the public schools, without engendering disruptive differences among the children and consequent religious controversy among the parents. The result is to destroy the privilege of non-conformity which is the very essence of the constitutional right and necessarily to create among the school children the impression that our vaunted Bill of Rights is in some aspects at least a mere set of platitudes.

Conclusion

The First Amendment confers no authority: it is strictly a limitation of power. By it—

> "man's relation to his God were made no concern of the State. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views." (*United States* v. *Ballard*, 322 U. S. 78, 87).

We fully agree that the religious instruction of the child should be given along with its secular training, but this does

not mean that it must be given by the same persons and in the same place. "The only construction that can be placed upon Protestant advocacy of sectarianism in public school education is an admission of weakness. Are Protestant parents unable to lead their children toward religion in their own homes? And what of the churches? If Sunday school attendance has fallen off to an alarming extent what is the reason for it?" Henry J. Williamson, *Religion and the Public Schools*, The Churchman (August, 1947) Vol. 61, No. 14, pp. 10-11.

All the duties of parents and functions of the home are not lightly to be shifted to the public schools, and certainly not when to do so violates the long-established interpretation of the First Amendment. To now break down the separation between church and State that has hitherto preserved the public schools from sectarian teaching can serve only to reopen a Pandora's box of religious strife and bigotry. It was the intention of the men who framed the Constitution to avoid all the evils of religious controversy. No struggle can approximate the bitterness of a religious fight. Once let the public schools be made a battle field on this matter and a new qualification is created for members of local school boards, injecting into school elections an element obviously detrimental to the general welfare. It would indeed be the beginning of religion in our civil affairs.

It is submitted that the decision of the Supreme Court of Illinois should be reversed.

Respectfully submitted,

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for General Conference of Seventh Day Adventists.

December, 1947.